

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1215 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHUPAT @ ISHWARBHAI KAHAR

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive

detention dated 17th December, 1998 made by the Commissioner of Police, Vadodara City, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of public order. Three offences punishable under the Bombay Prohibition Act have been registered against the petitioner. In each of the said cases, the petitioner was found to be in possession of country liquor. Besides, three individuals, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on the public order. They have particularly referred to the incidents that occurred on 22nd August, 1998, 19th September, 1998 and 6th October, 1998. In each of the said incidents, the petitioner is alleged to have beaten the concerned witness in a public place and to have used lethal weapon {khanjar} for issuing threats and to terrorize the people who had gathered at the spot. The incidents are alleged to have caused breach of public order in the concerned locality. The detaining authority has recorded his subjective satisfaction in respect of the petitioner being a bootlegger and his activities being prejudicial to the maintenance of public order. He has also recorded his subjective satisfaction in respect of the genuineness of the statements and the fear expressed by the witnesses. The previous detention of the petitioner under the Act has also been referred to and it is stated that the evidence taken into consideration in the earlier order of detention has not been taken into consideration while making the impugned order of detention. Besides, the petitioner's activities are also injurious to the public health.

4. It is submitted that the impugned order of detention has been made after a long delay from the date of the registration of offence against the petitioner. The delay has snapped the link with the cause of action and the order, and therefore, the subjective satisfaction recorded by the detaining authority is vitiated. It is next contended that the representation made to the detaining authority on 13th February, 1999 and delivered on 14th February, 1999, has not been considered by the detaining authority at all. Though the factum of previous detention has been taken into consideration, the grounds thereof have not been supplied to the petitioner alongwith the order and the grounds of detention.

5. The petition is contested by the learned AGP Ms. Punani. She has relied upon the affidavit made by the detaining authority and has submitted that the representation made by the petitioner on 13th February, 1999 was never received by the detaining authority. She has also submitted that even after registration of the offence against the petitioner and his release on bail, the petitioner has continued his nefarious activities, and therefore, there is a live link with the cause of action, and hence, the subjective satisfaction recorded by the detaining authority cannot be vitiated.

6. Upon perusal of the records, I find that after registration of the offence on 25th July, 1998 and the petitioner's release on bail on 27th July, 1998, the petitioner has continued his anti-social activities. This fact is evident from the statements made by the witnesses. The statements of witnesses were recorded by the concerned Police Inspector on 5th November, 1998 and 6th November, 1998 respectively, which were verified by the detaining authority personally on 9th December, 1998 and thereafter the impugned order has been made on 17th December, 1998. The continuity of these incidents has maintained the link with the cause of action, and the subjective satisfaction recorded by the detaining authority cannot be vitiated on the ground of delay. Ms. Pahwa has produced AD slip in support of her contention that the representation made on 13th February, 1999 was delivered on 14th February, 1999. Upon perusal of the said AD slip, I find that the said slip is addressed to Shri K.N Sharma, Police Commissioner, Vadodara City. The said slip does not bear any date, either in the front or on the reverse. A stamp of clerk to the Office of Commissioner of Police, Vadodara City appears on the acknowledgment side of the slip and bears some signature, and has been forwarded to the Surat City and bears the stamp of the Office Superintendent, Police Commissioner, Surat City. The same, however, is not signed. Thus, neither the said slip bears a date nor the signature of the concerned clerk in the office of the Commissioner of Police, Surat City nor the stamp of the post office. In view of the affidavit made by the detaining authority and the categorical denial of the receipt of the representation, it is not possible to hold, on the basis of the AD slip produced by Ms. Pahwa, that the said representation was delivered in the office of the detaining authority, as alleged. On perusal of the grounds of detention, it is manifest that the earlier detention of the petitioner made on 26th July, 1993 has been referred to by the detaining authority as a matter

of information only, however, has not been relied upon by the detaining authority for recording his subjective satisfaction. It is categorically mentioned that the materials before the detaining authority on 26th July, 1993 had not been taken into consideration. The impugned order of detention having not been based on the previous detention of the petitioner, the petitioner was not required to be supplied the grounds of the earlier detention or the materials relied upon at the relevant time. The order of detention would, therefore, be not vitiated for non supply of the said documents which were not relied upon by the detaining authority, while recording his subjective satisfaction. No other ground is urged before me.

Petition is dismissed. Rule is discharged.

Prakash*